IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Bail Appl..No. 6768 of 2007()

(S.T.1162/2004 OF JUDICIAL FIRST CLASS MAGISTRATE COURT I, KOCHI)

PETITIONER/ACCUSED:

VISHNU M.RAWAL, S/O. MOHANLAL G.,
SREEVALSAM HOUSE, KAIKULANGARA NORTH,
NO.79 ANANDAVALESHWARAM NAGAR, THIRUMULLAWARAM
P.O., KOLLAM.

BY ADV. SRIC.M.MOHAMMED IQUABAL

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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B.A.No. 6768 of 2007

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Dated this the 7th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act. Cognizance has been taken as early as in 2004 as can be seen from the number assigned to the case as S.T.No.1162/2004. The petitioner has not appeared before the learned Magistrate so far. Consequent to non-appearance of the petitioner, the learned Magistrate has issued coercive processes against him. No notice of demand under Section 138 of the Negotiable Instrument Act was ever served. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was not wilful. It is submitted that the petitioner was not served with any summons. The petitioner is willing to surrender before the learned Magistrate and seeks regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions

may be issued under Section 438 Cr.P.C, prays the learned counsel for the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in accordance with law and expeditiously. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE